

1 BARRY E. HINKLE, Bar No. 071223
PATRICIA A. DAVIS, Bar No. 179074
2 CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
3 WEINBERG, ROGER & ROSENFELD
A Professional Corporation
4 1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
5 Telephone (510) 337-1001
Attorneys for Plaintiffs
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 THE BOARD OF TRUSTEES, in their) Case No. 10-5204 SI
capacities as Trustees of the LABORERS)
12 HEALTH AND WELFARE TRUST FUND)
FOR NORTHERN CALIFORNIA; LABORERS)
13 VACATION-HOLIDAY TRUST FUND FOR)
NORTHERN CALIFORNIA; LABORERS)
14 PENSION TRUST FUND FOR NORTHERN)
CALIFORNIA; and LABORERS TRAINING) **[PROPOSED] DEFAULT JUDGMENT**
15 AND RETRAINING TRUST FUND FOR)
NORTHERN CALIFORNIA,)
16)
Plaintiffs,) Date: May 13, 2011
17) Time: 9:00 a.m.
18) Courtroom: 10, 19th Floor
v.)
19) **Honorable Susan Illston**
SILVESTRI CONSTRUCTION, INC., A)
20 California Corporation,)
21 Defendant.)
22)

23 This matter came on for hearing for entry of Judgment by Default against Defendant
24 Silvestri Construction, Inc., a California Corporation (hereinafter "Defendant"), on May 13, 2011.
25 Plaintiffs The Board of Trustees, in their capacities as Trustees of the Laborers Health and Welfare
26 Trust Fund for Northern California; Laborers Vacation-Holiday Trust Fund for Northern
27 California; Laborers Pension Trust Fund for Northern California; and Laborers Training and
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1 Retraining Trust Fund for Northern California (hereinafter “Trust Funds” or “Plaintiffs”) were
2 represented by Concepción E. Lozano-Batista of Weinberg, Roger & Rosenfeld; Defendants made
3 no appearance. Having considered the pleadings and arguments in this matter, and good cause
4 appearing, this Court **FINDS AS FOLLOWS:**

5 1. The Complaint was filed with this Court on November 17, 2010.

6 2. The Complaint was served on Defendant on November 29, 2010, for which proofs
7 of service were filed before this Court with the Summons on December 14, 2010;

8 3. That no answer or other responsive pleadings having been filed within the time
9 permitted by law, default was entered against the Defendant on December 30, 2010;

10 4. Defendant has been an employer within the meaning of section 3(5) and section 515
11 of ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an industry affecting commerce within
12 the meaning of section 301 of the LMRA (29 U.S.C. § 185).

13 5. The Court finds the allegations in the Complaint on file herein are true including the
14 fact that Defendant has been bound to a written Collective Bargaining Agreement with the
15 Northern California District Council of Laborers, a labor organization within the meaning of
16 LMRA §301, 29 U.S.C. §150. By virtue of becoming bound to the Collective Bargaining
17 Agreement, Defendant became subject to all the terms and conditions of the various Trust
18 Agreements referred to in the Complaint;

19 6. That Defendant failed to pay delinquent contributions in the amount of \$24,168.80,
20 and liquidated damages and interest in the amount of \$14,421.91;

21 7. That Defendant has failed, neglected or refused to submit to an audit as requested
22 by Plaintiffs pursuant to said Collective Bargaining Agreement and Trust Agreements.

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** Judgment be
24 entered in favor of Plaintiffs and against Defendant as follows:

25 1. Defendant is ordered to pay \$24,168.80 in principal contributions to the Trust Funds;

26 2. Defendant is ordered to pay \$14,421.91 in liquidated damages and interest owed to the
27 Trust Funds;

1 3. Defendant is ordered to submit to an audit by auditors selected by the Trust Funds at
2 Defendant's premises during business hours, or where the records are kept, at a reasonable time or
3 times, and to allow said auditors to examine and copy such books, records, papers, reports of
4 Silvestri Construction, Inc., a California Corporation, relating to the time period beginning January
5 1, 2007 to the present, that are relevant to the enforcement of the collective bargaining agreement
6 or Trust Agreements, including but not limited to the following:

7 Individual earning records (compensation); W-2 forms; 1096 and 1099
8 forms; reporting forms for all Trust Funds; State DE-3 tax reports; workers
9 compensation insurance report; employee time cards; payroll journal;
10 quarterly payroll tax returns (form 941); check register and supporting cash
11 voucher; Form 1120- 1040 or partnership tax returns; general ledger –
12 (portion relating to payroll audit);

13 4. Defendant is ordered to pay all amounts found due and owing as a result of said audit of
14 its books and records pursuant to the Trust Agreements;

15 5. The Court issues an injunction directing Defendant to submit to the Trust Funds, all
16 reports and contributions due and owing by Defendant pursuant to the Trust Agreements;

17 6. The Court issues an order directing and permanently enjoining Defendant for so long as
18 they remain obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to
19 timely submit required monthly contributions reports and payments as required by the terms of the
20 collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2), (29
21 U.S.C. § 1132(a)(3), (g)(2));

22 7. Defendant is ordered to pay attorneys' fees in the amount of \$5,168.75;

23 8. Defendant is ordered to pay costs in the amount of \$530.00;

24 9. Defendant is ordered to pay interest on any amounts found due in an amount to be
25 determined consistent with 26 U.S.C. 6621; and

26 10. This Court shall retain jurisdiction of this matter to enforce the Order compelling an
27 audit and payment of all amounts found due and owing.

28 DATED: 5/13/11


HONORABLE SUSAN ILLSTON
JUDGE OF THE DISTRICT COURT

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